

Attorney for Petitioner: Pro Se

DOCKETED

IN THE FEDERAL DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
CHICAGO, ILLINOIS

FEB 05 2002

Hoang Nguyen PHi)

A 42-368-967 020 0843

Petitioner

JUDGE ALESIA

v.

PETITION FOR WRIT  
OF HABEAS CORPUS

MAGISTRATE JUDGE MASON

John Ashcroft, Attorney  
General of the United States,  
Brian Perryman, District  
Director, Immigration and  
Naturalization Service,  
Respondents

C.A.

RECEIVED

FEB 04 2002

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

COMES NOW Petitioner and requests that this Court issue a writ of habeas corpus to the Respondents showing why the continued detention of the Petitioner is not unlawful.

1. The Petitioner is subject to a final order of removal / exclusion from the United States. Petitioner has been found to be a non-citizen of the United States, and to be excluded as inadmissible from the United States.

JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. §2241, the general grant of habeas corpus authority to the District Courts.

1  
2  
3 THE PARTIES

4 3. The Petitioner is a non-citizen who has been found by the Attorney General not to be  
5 native and citizen of the United States, and to be amenable to removal / exclusion from  
6 the United States.

7 4. John Ashcroft is the Attorney General of the United States. Under his authority, the  
8 Respondent continues to be detained by the Immigration and Naturalization Service.

9  
10 5. Brian Perryman is the District Director for the Immigration and Naturalization Service.  
11 He is the legal custodian of the Petitioner.

12  
13 VENUE AND INTRADISTRICT ASSIGNMENT

14  
15 6. Petitioner is filing this Petition in the district in which the continuing decision is being  
16 made to detain the Petitioner, and in which district Petitioner's custodian, Brian  
17 Perryman, Chicago District Director of the Immigration and Naturalization Service,  
18 resides and has his place of business.

19  
20 GENERAL ALLEGATIONS

21  
22 7. The Petitioner is in the custody of the Respondents.

23  
24 8. The Petitioner has been in the custody of the Respondents for in excess of 6 months since  
25 the entry of the order finding Petitioner excludable / inadmissible to the United States.

26  
27 

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1 The terms "excludable" and "inadmissible" refer to the grounds of removability at 8 U.S.C. §1182. Individuals  
28 placed into proceedings prior to April 1, 1997, would have been ordered "excluded," while individuals put into

1

2 9. There is no reasonable likelihood that the Petitioner can be physically removed from  
3 United States in the foreseeable future. The United States is currently unable to detain,  
4 exclude, or remove individuals such as the Petitioner to his country of origin.

5

6

#### EXHAUSTION

7

8 10. Petitioner has exhausted his administrative remedies. Basically, there are no formal  
9 remedies available. Petitioner has made numerous attempts, formal and informal, to  
10 secure release. These have been unsuccessful.

11

12 11. The decision of the Attorney General to detain the Petitioner is subject to no  
13 administrative review; thus, none can reasonably be sought.

14

15 12. It would be unreasonable to require the Petitioner to undertake any additional steps  
16 to judicial review, given that the Attorney General's procedures have been found to be  
17 infirm by the Supreme Court, and are part of the issue complained of herein.

18

19

#### RIGHT TO JUDICIAL INTERVENTION

20

21 13. The Petitioner reallages and incorporates by reference each and every allegation of  
22 paragraphs 1-12 above.

23

24 14. By this Petition and Complaint, Petitioner alleges grave constitutional errors, and  
25 in statutory construction. Petitioner's continued detention by the Attorney General

26

27 proceedings after that date would have been found "inadmissible" and ordered "removed." It is a purely semantic  
distinction.

28

1 unauthorized by statute, and is violative of his constitutional rights.

2

3 15. Pursuant to Local Rule 81.4, Petitioner would state that the act complained of is the  
4 continued detention of the Petitioner past a six month period which the Supreme Court  
5 has considered presumptively reasonable to attempt to effectuate an order of deportation  
6 removal. Zadvydas v. Davis, et al, \_\_\_ U.S. \_\_\_, No. 99—7791, Slip Op. at 21 (June 28,  
7 2001).

8

9 16. Petitioner has a right to judicial intervention, and this Court has jurisdiction over this  
10 Petition and Complaint, pursuant to 28 U.S.C. §2241, the general grant of habeas  
11 jurisdiction. Petitioner is also guaranteed to habeas review as a matter of constitutional  
12 right. The availability of the Writ of Habeas Corpus is guaranteed by the Constitution,  
13 and may not be suspended except where “in cases of Rebellion or Invasion the Public  
14 Safety may require it.” U.S. Constitution, Art. 1, §9, Cl. 2 (Suspension Clause).

15

16

#### COUNT ONE

17

(Detention not Authorized by Statute)

18

19 17. The Petitioner realleges and incorporates by reference each and every allegation  
20 contained in paragraphs 1-16 above.

21

22 18. The Petitioner is being detained by the Attorney General, when it is no longer reasonable  
23 likely that the Respondents will be able to deport the Petitioner in the foreseeable future.

24

25 19. The Supreme Court has found that detention is reasonable and authorized by statute only  
26 to the extent necessary to effectuate an order of deportation / exclusion. Zadvydas v.  
27 Davis, et al, \_\_\_ U.S. \_\_\_, No. 99—7791 (June 28, 2001) (interpreting the statute so as

28

1 avoid constitutional infirmity).

2

3 20. There is no reasonable likelihood that the Respondents can effectuate exclusion / removal  
4 in this case in the foreseeable future.

5

6 21. Although the Zadvydas decision related to an individual subject to deportation, who had  
7 made a legal entry into the United States, the specific holding of the Court was based on  
8 reading of the statute, 8 U.S.C. §1231(a)(6), which reads as follows:

9

10 An alien ordered removed who is inadmissible under section 1182 of this  
11 title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of  
12 this title, or who has been determined by the Attorney General to be a risk  
13 to the community or unlikely to comply with this order of removal, may  
be detained beyond the removal period and, if released, shall be subject to  
the terms of supervision in paragraph (3).

14

15 8 U.S.C. §1231(a)(6) (1994 ed., Supp. V).

16

17 22. The Court interpreted this statute to include an “implicit limitation,” which limits an  
18 alien’s post-removal period detention to “a period reasonably necessary to bring about  
19 that alien’s removal from the United States.” Zadvydas v. Davis, 533 U.S. \_\_\_, Slip Op.  
20 At 9 (June 28, 2001).

21

22 23. Although the Supreme Court reached this interpretation of §1231(a)(6) in cases involving  
23 individuals who have effected a legal entry into the United States, the holding of the court  
24 was that the statute itself did not authorize detention of individuals past a certain point.  
25 is the same statute which authorizes the detention of aliens after the expiration of the  
26 removal period, whether those individuals are inadmissible, removable, deportable, or  
27 excludable.

28

1

2 24. Further, the reasoning of the Court supports such an interpretation. The Court employs  
3 the doctrine of "constitutional doubt" to avoid potential constitutional infirmity. As  
4 individuals who have entered the United States, the indefinite detention of individuals  
5 who have not effectuated an entry is a constitutionally troubling proposition. At least  
6 circuits have found that indefinite detention of individuals who were ordered "excluded"  
7 violates the Due Process Clause of the Fifth Amendment. Rosales-Garcia v. Holloman,  
8 238 F.3d 704, 725 (6<sup>th</sup> Cir. 2001); Rodriguez-Fernandez v. Wilkinson, 654 F.2d 1381  
9 (10<sup>th</sup> Cir. 1981).

10

11 25. Thus, the continued detention of the Respondent no longer falls within the grant of  
12 authority to the Attorney General that permits the Attorney General to continue to hold  
13 the Petitioner in detention.

14

15 26. Since the continued detention of the Petitioner is not authorized by statute, he is not  
16 being held unlawfully by the Respondents.

17

18 27. As one being held by the Attorney General without lawful authority, Petitioner seeks  
19 recourse via a writ of habeas corpus, ordering the Respondents to produce some reason  
20 for his continued detention.

21

22

## COUNT TWO

23

(Statute Facially Violates Due Process Clause)

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25 28. The Petitioner realleges and incorporates by reference each and every allegation  
26 contained in paragraphs 1-16 above.

27

28

1 29. The continued detention of the Petitioner, when there is no foreseeable likelihood that  
2 Petitioner can be removed / deported from the United States, also constitutes a violation  
3 of Petitioner's rights under the Due Process clause of the Fifth Amendment, absent such  
4 statutory or regulatory safeguards.

5  
6 30. Petitioner has a fundamental liberty interest in not being detained for an indeterminate  
7 length of time by the Attorney General. Zadvydas v. Davis, 533 U.S. \_\_\_, Slip Op. at  
8 (June 28, 2001).

9  
10 31. Deprivation of a fundamental liberty interest could only be justified if narrowly tailored to  
11 serve a compelling governmental interest. Flores v. Reno, 507 U.S. 292, 302 (1993).

12  
13 32. The Court in Zadvydas found that the government interests at stake here were not  
14 compelling. The Court considered two interests asserted by the government: ensuring  
15 alien's appearance at future proceedings, and preventing danger to the community. The  
16 first interest was held to be "weak or nonexistent" when an individual cannot be deported  
17 in the foreseeable future. Zadvydas, supra, Slip Op. at 10. The second interest,  
18 preventative detention, could only be upheld where "limited to specially dangerous  
19 individuals and subject to strong procedural protections." Id. This, held the Zadvydas  
20 Court, is clearly not the case with this statute. Id., Slip Op. at 10-11.

21  
22 33. Further, this statute is not narrowly tailored to protect any interest which the Respondents  
23 might assert. The statute provides only vague protections, and those protections are in  
24 the hands of the very same Respondents who are detaining the Petitioner in the first place.

25  
26 34. There exist no reasonable administrative or judicial safeguards governing the continued  
27 detention of the Petitioner. The continued detention of the Petitioner is considered by  
28

1 Respondents to be at their sole discretion. It would violate Due Process to permit the  
2 Attorney General to exercise such unbridled power to indefinitely detain human beings.

3  
4 35. Thus, the statute is facially violative of the Constitution, insofar as it permits the  
5 indefinite detention of individuals when deportation<sup>4</sup>/ exclusion cannot be effected.

6  
7 36. The statute is facially violative of the Constitution insofar as it permits the indefinite  
8 detention of individuals in the absence of adequate procedural safeguards.

9

10

### COUNT THREE

11

(Statute Violates Due Process as Applied)

12

13 37. The Petitioner realleges and incorporates by reference each and every allegation  
14 contained in paragraphs 1-16 above, and the legal arguments in paragraphs 29-36.

15

16 38. Alternately, Petitioner would argue that even if the statute is not unconstitutional on its  
17 face, that it is being unconstitutionally applied in this case. As applied, 8 U.S.C.  
18 §1231(a)(6) violates the Fifth Amendment Due Process Clause, both procedurally and  
19 substantively.

20

21 39. In terms of substantive Due Process, the Respondents' continued detention is not  
22 narrowly tailored to serve a compelling governmental interest in this case.

23

24 40. There is, for example, no showing that this Petitioner is a terrorist or spy, or that other  
25 such extraordinary conditions exist, such that Petitioner should continue to be detained  
26 longer than reasonably necessary to secure deportation or removal. Zadvydas v. Davis,  
27 al., \_\_\_ U.S. \_\_\_, No. 99—7791, Slip Op. at 15 (June 28, 2001).

28



1

2 41. Given the fundamental liberty interest at stake in the Attorney General's decision to  
3 detain the Petitioner, the procedures employed here do not comply with Due Process.

4

5 42. The procedures employed here permit the Attorney General to exercise unbridled power  
6 over the detention decision, without any independent review by an impartial adjudicator.

7

8 43. The procedures employed by the Respondents contain no protections to ensure timely  
9 review of a case, or to ensure that findings are timely communicated to the Petitioner.

10 The six month rule, even when followed, is insufficient protection in the context of a  
11 potential lifetime sentence of detention/

12

13 44. The procedures employed by the Respondents do not adequately protect the right of the  
14 Petitioner to be represented, in that the Respondent habitually and continually fail to  
15 advise counsel of upcoming hearings, and conduct hearings in remote and desolate  
16 locations.

17

18 45. The procedures employed by the Respondents do not provide adequate advance notice  
19 to the Petitioner of the time and place of the hearing.

20

21 46. The procedures employed by the Respondents do not permit the Petitioner to cross-  
22 examine witnesses or to review the evidence used against him in deciding whether to  
23 continue detention.

24

25 47. The procedural protections, considered in sum total, are inadequate, given the nature  
26 of the interest at stake and the potentially permanent detention of the Petitioner.

27

28

COUNT FOUR

(Declaratory Relief)

48. Petitioner realleges and incorporates by reference each and every allegation contained in paragraphs 1-16 above.

49. An actual and substantial controversy having arisen between the parties, and that controversy continuing to exist regarding their respective rights and duties, including without limitation the finding that the Petitioner remains subject to the Attorney General's power to detain non-citizens and the propriety of that continued detention.

50. Declaratory relief is necessary in that, as noted herein, Petitioner contends, and Respondents deny, that the Respondents are improperly continuing to detain the Petitioner beyond the grant of statutory authority and in violation of the Constitution.

PRAYER

WHEREFORE, Petitioner respectfully asks the Court to:

1. Assume jurisdiction over this matter;
2. Issue a Writ of Habeas Corpus requiring the Respondents to show why Petitioner's detention is not unlawful;
3. Declare that the continued detention of the Petitioner is beyond the authority granted the Attorney General by statute;
4. Declare that indefinite detention of the Petitioner is facially violative of the Due Process Clause of the Fifth Amendment;
5. Declare that the statute authorizing the indefinite detention of the Petitioner is

- 1 unconstitutional as applied;
- 2 6. Enjoin the Respondents from continuing to detain the Petitioner;
- 3 7. Order the immediate release of the Petitioner from custody, under appropriate and
- 4 reasonable conditions of parole; and
- 5 8. Grant such other relief as the Court deems necessary and proper.

6

7 Respectfully Submitted:

8 Hoang Nguyen Phi  
9 c/o, Tri County Detention Center.  
10 1026 Shawnee College Road  
11 Ullin IL, 62992.  
Address:

1-25-02  
Date

12

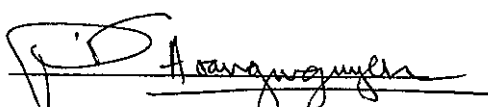
13 I, the Petitioner, hereby depose and say, under penalty of perjury, that the above statements are

14 true and correct to the best of my knowledge. Any documents attached to this Petition are true

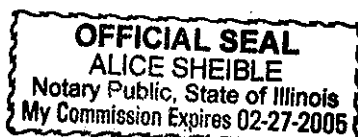
15 and accurate copies of the original documents, to the best of my knowledge and belief.

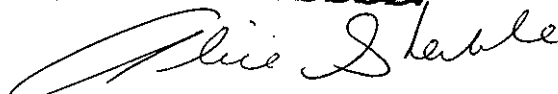
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1-25-02  
Date



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25 January 25, 2002

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